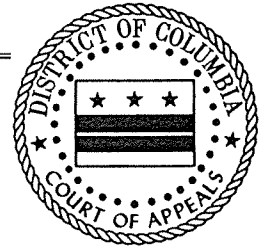


# **EXHIBIT 2**

RECORD NO. 18-CV-0919

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In The  
**District of Columbia**  
Court of Appeals



Clerk of the Court  
Received 12/10/2018 03:55 PM  
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**MIKHAIL FRIDMAN, PETR AVEN, AND  
GERMAN KHAN,**

*Appellants,*

v.

**ORBIS BUSINESS INTELLIGENCE LIMITED AND  
CHRISTOPHER STEELE,**

*Appellees.*

ON APPEAL FROM CASE NO. 2018 CA 002667 B IN THE  
DISTRICT OF COLUMBIA SUPERIOR COURT, CIVIL DIVISION,  
THE HONORABLE ANTHONY C. EPSTEIN, JUDGE PRESIDING

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IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
MEDIA AND COMMUNICATIONS LIST

Claim No. HQ18M01646

BETWEEN:

(1) PETER AVEN  
(2) MIKHAIL FRIDMAN  
(3) GERMAN KHAN

-and-

ORBIS BUSINESS INTELLIGENCE LIMITED

Defendant



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DEFENDANT'S RESPONSE TO PART 18 REQUEST

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UNDER PARAGRAPH 1

Of "Fusion engaged Orbis to provide the intelligence memoranda because Fusion's client needed the information contained in those memoranda for the purposes of prospective legal proceedings and/or obtaining legal advice and/or for establishing, exercising or defending legal rights."

**Your requests and our responses**

1. Did Fusion engage Orbis to provide the intelligence memoranda pursuant to an agreement made orally or an agreement in writing?

Response: orally.

2. If made orally, state when, where and between whom it was made, setting out the full substance of the words which constituted the agreement.

Response: Fusion engaged the Defendant pursuant to an agreement made orally between Mr Glenn Simpson of Fusion and Mr Christopher Steele of the Defendant in June 2016. Fusion instructed the Defendant to investigate and report, by way of preparing confidential intelligence memoranda, on Russian efforts to influence the US Presidential election process in 2016 and on links between Russia and the then Republican candidate and now President Donald Trump.

3. If made in writing, supply a copy of the agreement.

Response: not applicable.

4. Is it Orbis' case that Fusion's client needed the information contained in Memorandum 112:
  - (a) For the purposes of prospective legal proceedings?
  - (b) For the purposes of obtaining legal advice?
  - (c) For the purpose of establishing, exercising or defending legal rights.

Response: (b) and (c). Fusion's immediate client was law firm Perkins Coie LLP. It engaged Fusion to obtain information necessary for Perkins Coie LLP to provide legal advice on the potential impact of Russian involvement on the legal validity of the outcome of the 2016 US Presidential election. Based on that advice, parties such as the Democratic National Committee and HFACC Inc. (also known as "Hillary for America") could consider steps they would be legally entitled to take to challenge the validity of the outcome of that election. In turn, that may have resulted in legal proceedings within the meaning of limb (a) above, but the immediate needs of Fusion's clients fell within limbs (b) and (c).

5. If the answer to request 4 is in terms of (a), give full details of the “prospective legal proceedings” for which the information contained in Memorandum 112 was needed, identifying the prospective parties and the nature of the prospective claim.

Response: not applicable.

6. If the answer to request 4 is in terms of (b), give full details of the legal advice for which the information contained in Memorandum 112 was needed, stating who was to receive the advice, who was to provide it and the legal issues which were to be the subject of the advice.

Response: see the response to question 4 above.

7. If the answer to request 4 is in terms of (c), give full details of the “legal rights” which were to be “established, exercised or defended” by the use of the information contained in Memorandum 112 stating whose rights they were and the circumstances in which they were to be established, exercised or defended.

Response: see the response to question 4 above.

#### **UNDER PARAGRAPH 2**

Of: “(c) The disclosures referred to in subparagraph (b) above were required for the purpose of safeguarding the national security of the US and the UK”.

#### **Your request and our response**

8. State, so that the Claimants may understand the nature of the Defendant’s case, the factual basis on which it is alleged that the disclosure of Memorandum 112 was required for the purposes of safeguarding the

national security of the US and UK, identifying the manner in which it is alleged, that the disclosure of the Claimants' personal data would or might safeguard the national security of the US and the UK by means of such disclosure.

Response: prior to the preparation of Memorandum 112, allegations of Russian interference in the 2016 US Presidential election were under investigation by the Federal Bureau of Investigation ("FBI"). Those allegations included links between individuals associated with the Trump campaign and Russian operatives with links to the Kremlin. Any such interference would be likely to constitute a serious threat to democracy and national security in the US in the first instance, with further consequences for the national security of the US' partners, including the UK.

Memorandum 112 was concerned with such links. Its contents were reasonably necessary for the investigation and consideration of the allegations outlined above.

Memorandum 112 reported on links between the Claimants, who are Russian citizens with business interests in the United Kingdom and the United States and elsewhere, and their links to the Russian President, Vladimir Putin. Those links were material to the allegations outlined above. In summary, this was for the following reasons.

Internet traffic data suggested that a computer server of an entity in which the Claimants have an interest, Alfa Bank, had been communicating with a computer server linked to the Trump Organization. Alfa Bank instructed an individual, Mr Brian Benczkowski, to investigate the allegations of illicit communications between Alfa Bank and the Trump Organization. Mr Benczkowski had previously been part of Mr Trump's campaign and Presidential transition team.

Mr Benczkowski has recently been appointed as Assistant Attorney General for the Criminal Division of the US Department of Justice, having been nominated by President Trump.

Memoranda including Memorandum 112 were requested from the Defendant by individuals with official responsibilities for and/or a relevant interest in the safeguarding of the national security of the US and UK. The Defendant disclosed Memorandum 112 to those individuals for those purposes, reasonably understanding them to be making legitimate and proportionate requests in their official capacities.

**UNDER PARAGRAPH 4**

Of: "The Defendant relies on the exemptions under section 28(1) and 35(2) of the DPA".

**Your requests and our responses**

9. If and insofar as it differs from the case set out in response to Request 8, set out the full factual case which the Defendant will seek to establish at trial to support the contention that it is entitled to rely on the exemption under section 28(1) in relation to the disclosure of the Claimants' personal information in Memorandum 112.

Response: see the response to question 8 above.

10. Set out the full factual case which the Defendant will seek to establish at trial to support the contention that it is entitled to rely on the exemption under section 35(2) in relation to the disclosure of the Claimants' personal information in Memorandum 112.

Response: see the response to question 4 above.

**UNDER PARAGRAPH 6**

Of: "(c) ... the Defendant will rely inter alia on other information about the Claimants in the public domain".

**Your requests and our responses**

11. Set out all the "information about the Claimants in the public domain" on which the Defendant relies.

Response: the Defendant relies on the following:

- 'Lunch with the FT: Mikhail Fridman', *Financial Times*, 1 April 2016
- 'How to Take On Kremlin and Win', *Sunday Times*, 14 October 2012;
- 'The autumn of the oligarchs', *New York Times*, 8 October 2000;
- 'Profile: Mikhail Fridman – the Teflon oligarch new to Londongrad', *Russia Today*, 11 April 2016;
- 'Petr Aven: the Russian oligarch with an eye for art, not yachts', *Financial Times*, 12 July 2017;
- 'Deutsche Bank: A Global Bank for Oligarchs – American & Russian, Part 2', [www.whowhatwhy.org](http://www.whowhatwhy.org), 15 January 2018;
- 00-2208 OAO Alfa Bank, et al v Center/Public Integrity et al, Memorandum Opinion dated 27 September 2005 of Judge Bates of the United States District Court for the District of Columbia;
- Each of the Claimants was included on the US State Department's 'Report to Congress Pursuant to Section 241 of the Countering America's Adversaries Through Sanctions Act of 2017 Regarding Senior Political Figures and Oligarchs in the Russian Federation and Russian Parastatal Entities', "as determined by their closeness to the Russian regime and their net worth";
- Each of the Claimants was included in the 'The Top-50 of Powerful Businessmen and Investors' in terms of political influence in Russia, *Nezavisimaya Gazeta*, 27 July 2007;

- 'Fate of foreign venture lies in Russian tussle: Shift at the Kremlin befuddles investors', *The International Herald Tribune*, 8 July 2008;
- Vladimir Putin was present at the signing of the TNK-BP joint venture deal in 2003;
- 'Profile – Mikhail Fridman: Alfa Group Chairman Builds Russian 'Benchmark'', *IPR Strategic Business Information Database*, 30 January 2002;
- 'Profile – Petr Aven: Prominent Politician & Successful Businessman in One', *IPR Strategic Business Information Database*, 14 February 2002;
- President Vladimir Putin participated in a meeting with the First Claimant, which was broadcast on television, in which he agreed with the First Claimant that reports of Alfa Bank's liquidity problems during 2004 were artificial;
- 'Alfa Male', *The Daily Deal*, 15 August 2005;
- 'Banks Were Remembered in August', *Izvestia*, 14 August 2006;
- 'Reiman Strikes Back at Allegations', *Moscow Times*, 6 December 2005;
- 'Cameron under pressure to punish Putin oligarchs', *The Times*, 24 July 2014;
- Article in the *Rusji Kurier*, 26 March 2007;
- A report on the Second Claimant prepared by the business intelligence company Stratfor (Strategic Forecasting Inc), 2007, Wikileaks;
- The First Claimant gave evidence to The United States District Court for the District of Columbia to the effect that he estimated that he spoke to President Putin over 10 times in the course of two and a half years, and that they were one of a handful of private financial companies who had a special, direct line to the Kremlin (00-2208 OAO Alfa Bank, et al v Center/Public Integrity et al, Memorandum Opinion dated 27 September 2005 of Judge Bates of the United States District Court for the District of Columbia);
- 'The autumn of the oligarchs', *New York Times*, 08 October 2000;
- The Claimants are widely reported to have not only met with, but lobbied and advised Russian political leaders, in particular President Putin on

policy. For example, the First and Second Claimants were Board members of the Russian Union of Industrialists and Entrepreneurs, a lobbying group, which regularly held meetings attended by President Vladimir Putin who has stated that many government decisions are only taken after consulting with the group, *Kommersant*, 19 December 2016;

- 'Power Broker in Russia's Shifting Scene', *Financial Times*, 29 August 2003;
- 'Oligarchs' Power Unfettered Under Putin Once Ruthless Entrepreneurs Cede Politics to Kremlin for Free Economic Rein', *The Washington Post*, 14 December 2002;
- 'Quinns now face a triumvirate of Russian oligarchs with links to President Putin', *The Irish Times*, 05 November 2012;
- The Duma Deputy Nikolai Pavlov held a press conference alleging that he had been targeted in a corrupt attempt to bribe him to give favourable testimony in arbitration proceedings by entities associated with the Claimants, IPOC press release, 26 September 2005 and undated Lenta profile of Second Claimant;
- A full page ad including photographs of the First and Second Claimants was published stating 'The royal court of Great Britain does not trust these people' in connection with the High Court's judgment following the trial of Boris Berezovsky's successful libel claim against the Second Claimant *Kommersant*, 6 June 2006;
- 'Putin's Kleptocracy: Who Owns Russia?', Karen Dawisha, 2014;
- The Second Claimant was reported by *The Moskovskaya Pravda* to have been involved in the killing of the American journalist Paul Klebnikov, who worked for the Russian edition of *Forbes*, allegations in respect of which the Second Claimant brought a successful claim, which was subsequently the subject of an application to the European Court of Human Rights (*Laskin v Russia*, 593/06), 'Bullet and pen', *Moskovskaya Pravda*, 21 July 2004;
- The Russian Duma has been reported to have issued reports stating that the "foreign economic activities" of business entities associated with the Claimants "are accumulating a critical mass of problems which are

dangerous to the reputation of Russian business and whole economy of the country" Stratfor (Strategic Forecasting Inc), 2007, Wikileaks.

12. Set out all other information on which the Defendant relies so that the Claimants know the case which they have to meet. The Claimants will object to the Defendant relying at trial on any information which is not now particularised.

Response: the key examples are provided in answer to question 11. Those examples suffice for the Claimants to understand the case they have to meet. The Defendant does not accept that the Claimants would be entitled to preclude it from adducing any supplementary examples that further illustrate and make good its case.

Of: "(d) ... In any event, conditions 5(b) and (d) and Condition 6 from Schedule 2 to the DPA were met".

**Your requests and our responses**

13. Set out, in relation to each disclosure, the Defendant's full factual case that condition 5(b) in Schedule 2 to the DPA was met, identifying the enactment relied on.

Response: as regards the US, the FBI has authority to investigate threats to national security pursuant to Presidential Executive Orders, Attorney General Authorities, as well as under statute. The Defendant relies in particular on Title II of the Intelligence Reform and Terrorism Prevention Act of 2004 and Executive Order 12333; 50 U.S.C. 401 and 50 U.S.C. 1801.

As regards the UK, the Defendant relies in particular on the Intelligence Services Act 1994.

14. Set out, in relation to each disclosure, the Defendant's full factual case that condition 5(d) in Schedule 2 to the DPA was met identifying the function of a public nature relied on and the person who is alleged to have been exercising this function in the public interest.

Response: as regards the US, the Defendant relies on the functions of the FBI. As regards disclosure to David Kramer and Senator John McCain, it relies on the functions of the Senate Armed Services Committee (including its Cybersecurity and Emerging Threats and Capabilities sub-committees), the Senate Select Committee on Intelligence and the Senate Committee on Homeland Security and Government Affairs. As regards disclosure to Strobe Talbott (if relevant to this claim), the Defendant relies on US Department of State Foreign Affairs Policy Board.

As regards the UK, the Defendant relies on the functions of the Central Intelligence Machinery.

15. Set out, in relation to each disclosure, the Defendant's full factual case that condition 6 in Schedule 2 to the DPA was met.

Response: the processing complained of was necessary in the legitimate interests of Fusion and its clients, as well as the interests of the officials who received Memorandum 112 for the purposes of safeguarding national security. Those interests are outlined in responses given above. In addition, the Defendant relies on the public interest in the assessment of (a) the legal validity of the 2016 Presidential election, and (b) potential threats to the national security of the US and UK. The Defendant also relies on its own legitimate commercial interest in providing the services described above. The processing complained of was not unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the Claimants.

Of: "(d) ... In any event, conditions 5, 6 and 7(b) and 7(c) from Schedule 3 to the DPA were met".

**Your requests and our responses**

16. Set out, in relation to each disclosure, the Defendant's full factual case that condition 5 in Schedule 3 to the DPA was met stating when it is alleged that the personal data in question was made public as a result of steps deliberately taken by the First and Second Claimants.

Response: the examples given in answer to question 11 above, which include reporting in the public domain on or arising from steps deliberately taken by the First and Second Claimants.

17. Set out, in relation to each disclosure, the Defendant's full factual case that condition 6 in Schedule 3 to the DPA was met, identifying the legal proceedings, legal advice or legal rights relied on.

Response: see the response to question 4 above.

18. Set out, in relation to each disclosure, the Defendant's full factual case that condition 7(b) in Schedule 3 to the DPA was met, identifying the enactment relied on.

Response: see the response to question 13 above.

19. Set out, in relation to each disclosure, the Defendant's full factual case that condition 7(c) in Schedule 3 to the DPA was met, identifying the "function of the Crown" or government department alleged to have been performed by the Defendant.

Response: see the response to questions 13 and 14 above in respect of the UK.

**UNDER PARAGRAPH 8**

Of: "At trial, the Defendant will rely inter alia on other information about the Claimants in the public domain".

**Your request and our response**

20. Set out all the "information about the Claimants in the public domain" on which the Defendant will rely.

Response: see the response to question 11 above.

**UNDER PARAGRAPH 10**

Of: "The Defendant took such care as was reasonably required in the circumstances, including to establish the accuracy of the personal data complained of".

**Your requests and our responses**

21. Set out full details of the care it is alleged was reasonably required to comply with the requirements of the DPA in the circumstances and the steps which were, in fact, taken by the Defendant which are alleged to constitute the taking of such care.

Response: the Defendant had regard to the nature of the allegations on which it was instructed to report, their importance to the public interest and national security of the US and UK, as well as the limited circulation intended for Memorandum 112 and the roles and status of the intended recipients. The Defendant took all steps reasonably required in that context, including

considering public domain material (see above) and the input of intelligence sources, the reliability of which the Defendant assessed using its knowledge and experience. The Defendant is restricted by law in terms of further information it can provide at this stage, including by virtue of section 10 of the Contempt of Court Act 1998.

22. Without prejudice to the generality of the foregoing, set out the steps taken by the Defendant to establish the accuracy of the following personal data:
- (a) That significant favours are done by President Putin for the Claimants and for President Putin by the Claimants.
  - (b) That the First and Second Claimants give informal advice to President Putin on foreign policy.
  - (c) That shortly before 14 September 2016, the Second Claimant met directly with President Putin in Russia.
  - (d) That the First and Second Claimants used Mr Oleg Govorun as a "driver" and "bag carrier" to deliver large amounts of illicit cash to President Putin when he was Deputy Mayor of St Petersburg.
  - (e) That the First and Second Claimants do President Putin's political bidding.

Stating, in each case, when, where and by whom the steps were taken and what, precisely, was done to establish the accuracy of the personal data.

Response: see the response to question 21 above.

The Defendants believe that the facts set out in this Response are true.

Signed:



Nicola Cain

Position: Partner, Reynolds Porter Chamberlain LLP

Date: 01 August 2018

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of December, 2018, the foregoing was served electronically upon:

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